

NWX-NOAA-USEC & ADMIN OFFICES

Moderator: Linda Belton
July 17, 2013
2:00 pm CT

Coordinator: Welcome and thank you for standing by.

Currently, participants are on listen-only for the presentation.

At the time of the question-and-answer session, press star then 1 to ask a question.

Today's conference is being recorded for transcription. If anyone objects they may disconnect.

I'd like to turn the conference over to Linda Belton. Thank you.

Linda Belton: Hello everyone. Good afternoon. I want to thank you for joining us today to discuss the draft NOAA procedures for government-to-government consultation with federally recognized tribes and Alaska native corporations.

My name is Linda Belton and I'm with the NOAA office of Legislative and Intergovernmental Affairs, and most recently I've been appointed NOAA's Tribal Liaison.

In keeping with the requirements of the President's Executive Order and the Tribal Consultation of Coordination Policy of the Department of Commerce, the Administrator of NOAA has assigned NOAA's of Legislative Affairs Director the responsibility of ensuring meaningful and timely government-to-government consultation and communication.

So first, let me briefly talk about my role as Tribal Liaison. My duties include developing and issuing guidance on tribal consultations, and this includes handbooks, guidelines, and procedures ensuring availability of online training and other resources for NOAA personnel assisting the tribal consultations. Maintaining documentation of tribal consultations conducted by NOAA line offices, and meeting reporting requirements established by Department of Commerce and Office of Management and Budget.

Let me also explain that the designation of a Tribal Liaison does not change or alter any of the existing relationships that you may now have with our NOAA line offices or our regional offices.

So allow me to introduce my colleagues joining us today. Ms. Molly Holt is a staff attorney in NOAA's General Counsel's office, and she provides legal counsel to the Tribal Liaison and consultation team.

And Ms. Heather Sagar is the Senior Policy Advisor to the Department of Commerce Assistant Secretary for Conservation and Management here at NOAA.

And also joining us today is Ms. Dee Alexander, the Senior Advisor on Native American Affairs for the Department of Commerce.

On June 24th, NOAA announce the availability of the Draft Consultation Handbook in the Federal Register and requested comments. This draft handbook is intended to assist NOAA staff in conducting effective government-to-government consultations. And it was drafted by a working group composed of employees representing each of the NOAA line offices and programs.

I hope that everyone will be able to - has a copy of the handbook. Unfortunately due to technical - I'm going to confess. Technical error on my part, I was unable to download the handbook online. So I believe you may already have a copy, and if not, please go to the NOAA Legislative Affairs Web site, and that's www.legislative.noaa.gov if you need to see - if you don't have a copy of the handbook with you.

If you have a comment or questions, please state them clearly. We need to confer - we may need to confer with specific offices or programs to answer certain questions, but we will try to answer all of your inquiries here.

We have established this session to conclude at 4:00 pm. However, we will be able to stay on a little longer if there are more questions and if we have to.

And, this Webinar is being recorded to capture your issues and comments.

So operator, I think we're ready to being.

Coordinator: Thank you.

At this time all parties are on listen-only for the presentation. Did you want to open the lines?

Linda Belton: Yes. I would like to open lines for questions please. Thank you. Questions and comments.

Coordinator: If you would like to ask a question or make a comment, please press star then 1.

To withdraw a question or comment, star then 2.

Once again if you would like to ask a question or make a comment, please press star then 1.

One moment for requests.

Once again please press star then 1 if you would like to ask a question or make a comment.

One moment. We do have a request coming through.

Freddy Romero, your line is open.

Freddy Romero: Yes. On Page 10 - let's see. Let me get to it. It's Section D and it talks about tribes that don't respond for invitation to consultation. And it states in here that if there's a lack of response that there is no definite contact, or there will be - it does say that a phone call will be made only if NOAA has made a determination that it's going to directly affect a tribe.

And I think if you're going to send out notices that there needs to be a follow-up call, and that should be stated in there that there must be a follow-up call rather than to leave it up to the determination of NOAA to determine whether

or not there may be impacts or no impacts to tribes concerning a particular policy change or project that you have.

Let me see. Also on Page 12 in the Exchange of Info, it talks about the limited capacity to protect information shared by tribes. It's a little disconcerting when we share information that we feel needs to be protected. And I understand the FOIA, but I think that when a request is made for information concerning consultation with tribes, I think there could be a better way of releasing information and still protect the information that was shared by tribes when that request is made.

Linda Belton: Okay sir, what was your name again? I'm sorry.

Freddy Romero: Freddy Romero and with the Santa Ynez Band of Chumash Indians.

Linda Belton: Anyone have a comment on that?

Okay, thank you. We will take that under consideration. Thank you very much for your comments.

Freddy Romero: Okay.

Coordinator: Once again if you would like to make a comment or ask a question, please press star then 1.

We do have another request coming through. One moment.

(Joe Shoemaker), your line is open.

(Joe Shoemaker): Hi, all. Hi, Linda, and everybody in the room.

Just a quick question on the structure of today's call and Webinar. Can you give us a little outline of what we're up for here, and - it'd help me in potentially framing questions. Thank you.

Linda Belton: Well basically what we'd like to do is we hope that folks have viewed the handbook or have this in front of them. I said I hope. If not, I - again, I apologize.

But what we want to do is we would just like to have your thoughts and comments on certain sections or on the process of the handbook. We'd like to know if you have any suggestions on how NOAA can relate better and communicate more effectively with the tribes.

So basically, it's just a question-and-answer that we can - if we can answer a question for you right here we will. If you have a - if you need - a question regarding the process. If you have a comment, we will take those comments down and take them into consideration. And we will also - like I said, we are - we do have a transcription, and so we will have your comments for the record.

(Joe Shoemaker): Okay. And I was...

((Crosstalk))

Linda Belton: But basically right now it's just a question-and-answer.

(Joe Shoemaker): I think I was under the impression, and maybe others as well, that we might just be going through the policy somehow and then ask for comments as we went along. But, that's not what you're looking for?

Linda Belton: We could go through each section if you'd like, but I really thought that that would take too long. But I think right now we're just going to go through the question-and-answer period.

(Joe Shoemaker): Okay, thank you. That clarifies it for me. I'll get back with you then later.
Thank you.

Linda Belton: Yes. Thank you. Next?

Coordinator: At this time we do have one more request from (Julie).

(Julie Raymond-Jacobi): Yes, this is (Julie Raymond-Jacobi). I'm a cleric in Nome, Alaska. I had the same question as the previous person. I guess I just assumed there would be some kind of presentation on the context and background of the handbook and we participated in formulating it. So if that's not the case, I've reviewed. But, I will call into the second Webinar my questions and comments.

Linda Belton: Yes. We could...

Dee Alexander: (Julie), this is Dee Alexander. I thought we were going to have something that we were going to be able to see as well, but maybe on our next Webinar we can post that actually and go over each section. But we did feel like reading it line-by-line - because it is a lengthy document. And I guess if we can send this back out again and hopefully maybe get it online we could you know easily go by each section and get comments.

But, we just didn't want to read the whole document to you all line-by-line because it takes time. So we sent this out for review, and maybe we can send

that notice out again and ask for people to please read this over and be prepared for comments and questions during our next Webinar.

Would that be all right?

(Julie Raymond-Jacobi): I think that would be a good idea for people who weren't aware. Like I said, I did read it and I was not looking for a line-by-line review, but was hoping for some context on its development and the staff that participated. Thank you.

Heather Sagar: I can give you a little context on the staff that participated and the development.

As - this is Heather Sagar. I work for the Assistant Secretary of NOAA for Conservation and Management, and I'm also the National Marine Fishery Service Travel Liaison.

So basically, this is put together - the EO came out (unintelligible) their policy. And while DOC was finalizing and - formulating and finalizing their policy, NOAA wanted to get a jump on how we were going to implement that policy so we pulled together working groups across all of NOAA.

As you know, we have several line offices within NOAA; Fishery Service, Ocean Service, Weather Service, (Unintelligible), and each one of those offices put one Tribal Liaison into this NOAA tribal working group that started working on this handbook.

Each one of those Tribal Liaisons then had a small group that they worked with within their line. So myself as the Fisheries Tribal Liaison, I had a group of say ten folks that work on Fisheries issues with travel representatives that

every day are doing these consultations so that I made sure that we had folks with the correct knowledge helping to prepare this.

And we sat down and we thought, "Well, what do we need here? What are the pieces that we need in order to make a robust handbook so that if you just pick this up and read it, you understand if you're new to NOAA and you just pick it up and read it, can you understand what - you know how to do - what your requirements are? Why you're doing this? And, maybe some suggested steps to go forward on it."

And so we spent, gosh, more than six months. I think our first meeting was in October of last year, and sort of formulating an idea and putting this - putting together the workbook and figuring out what the sections should be and where different information should fall. And what you're looking at is the final draft that this work group cleared off on and then all of the line office assistant administrators, and then ultimately the head of NOAA.

So that was the process behind putting together the handbook and sort of the staff and the folks that were responsible.

I hope that answers your question, (Julie). Is there any questions regarding the process that I can help you with?

(Julie Raymond-Jacobi): Not sure if you can still hear me.

Heather Sagar: Yes.

Dee Alexander: We can hear you.

(Julie Raymond-Jacobi): Oh, okay. Thank you. Yes, thank you for that background.

I guess I have a question about Alaska - the Alaska portion of this development. Tribes from the Bearing Strait region have worked with (unintelligible) in particular, but also with other parts of the Department of Commerce to submit comments over the past several years about the tribal consultation process in general and how they believe it should work and what a process should be. Were any of those comments used during the development of this?

Heather Sagar: The folks in Alaska, I had a - actually five people from Alaska whom I'm - from Fisheries, whom I'm sure you sent your comments into, reviewing this document. So I think that they have incorporated them through their comments back towards me.

But, I would have to go back to Alaska to ask them if specifically comment-by-comment those were incorporated.

Linda Belton: Do you have any other questions or...

(Julie)?

Hello?

Coordinator: And at this time I'm showing no other questions.

Linda Belton: All right. Well does anyone have any comments about - any thoughts or any comments they'd like to make about the - about working with NOAA in this process?

Heather Sagar: So this is Heather Sagar again.

I know that folks have probably all taken the time to read through this and sort of think about it from their perspective. I'm interested in gut reaction. What are your - just what are your thoughts of the handbook in general and the effort in general, if any of you have that.

Coordinator: As a reminder, press star then 1 to request an open line.

(Joe), your line is open.

(Joe Shoemaker): Gut reactions. Hi Heather, this is (Joe).

Heather Sagar: Hey, (Joe), thank you.

(Joe Shoemaker): Yes. So gut reactions are that it looks like it's well thought out and obviously speaks from experience, so I had a - I looked through and I saw that there were some lessons learned and it seemed to be pretty comprehensive for the most part. I think there are some - each tribe will have their own input obviously on that.

I was pleased to see the section that noted that tribes that have developed their own consultation policies, NOAA's willing to work with them to develop a way to work within that structure.

Heather Sagar: Great.

(Joe Shoemaker): Appreciated that.

And one of my concerns that I've had as an - with experience in this has been the consultation process making sure that it has the right people at the table.

And it seems to take the effort to make sure that it does that; although, I don't know that it clearly states that. It certainly is aiming towards making sure that the consultation occurs with the right people.

We have had...

Heather Sagar: That's absolutely the intent. And if you think there's ways that we can tweak that language, (Joe), we'd love those comments.

(Joe Shoemaker): Yes. Because that's - we've had experience in the past where a supposed consultation had occurred, when in fact it just was not. So, appreciate that.

Heather Sagar: Absolutely.

And then actually on your recommendation from a past conversation, we ensured - you'll note in Appendix A that there is - all of the line office Travel Liaisons for NOAA are listed with their phone number and their email address in case you know folks are just wondering, "I don't know who to talk to about," you know, some specific issue within NOAA. It's sort of lies out who you can contact, whether it's Linda for an overarching tribal issue and trying to figure out where to go to. Or if you already know it's a Fisheries issue, where you could come to, to get more information.

And so we took your comment there from past conversation.

(Joe Shoemaker): Real good. Thank you.

Coordinator: And once again press star then 1.

We do have a request coming from (Gary). Your line is open.

(Gary Simms): Yes, Heather, this is (Gary Simms). I'm just calling in to let folks know the Northwest and Southwest have been listening to the call, and I will do whatever I can to help with the implementation of the handbook and answer questions to coordinate with the tribes on the West Coast.

Linda Belton: Thank you, (Gary).

Heather Sagar: Great, (Gary). Thank you.

Linda Belton: We know he's been out there for many, many years and working with a lot of groups and working with the tribes, and so we thank you for not only your help, but also your advice on this. Thank you very much.

(Gary Simms): You bet.

Coordinator: And once again press star then 1.

Linda Belton: Let me just say also while we're waiting that Heather - I just want to say she did a great job. She led the team that put together this handbook - brought us all together. It's like herding cats and she did it. And it took - and she did it I think in pretty good time and she's a stern task master, I can tell you. But she really worked very hard to put this together, and she knows this back to front. So, thank you.

Molly Holt: If there's anybody else on the call that would like to suggest or recommend a - maybe a second or third call offline to consult with a particular group or a tribal government, please let Linda or Dee know so maybe we can set that up in the meantime instead of just scheduling the next second Webinar. We'd be glad to do that.

Linda Belton: If no one else has any other comments, would anyone here like to make anymore comments, or - okay.

Well we thank you...

Coordinator: We do have one coming through. (Tom), your line is open.

(Tom Foster): Hi. This is (Tom Foster) calling. I'm just glancing through the draft policy and I'm looking at Page 6 on communication.

What I noticed in the second paragraph of communication is the sentence saying that information received by NOAA from a tribe won't be released without permission unless required by FOIA. And then in the next paragraph you go on to say that NOAA will make every reasonable effort to provide adequate information to the tribe.

It might be a good idea to say something, if you were willing to, about - in that third paragraph about avoiding the necessity for formal FOIA request by the tribe so that when the tribe is inquiring about a NOAA action or proposed regulation and so on, they wouldn't need to make a FOIA request and go through the whole FOIA procedure in order to get adequate information.

Molly Holt: That's a good point.

Heather Sagar: Thank you.

Molly Holt: Thank you.

Linda Belton: That was Molly Holt, our legal advisor.

Coordinator: We have a request from (Gary). Your line is open.

(Gary), your line is open.

Please check your mute button. Your line is open (Gary) if you would like to make a suggestion or a comment.

(Gary Simms): I'm sorry. This is (Gary Simms). I was on mute.

I think the intent for clarification was not that the tribe would have to go through FOIA to request information, but a reminder that if we receive information from a tribe, we could receive a FOIA request from a third party asking for the related documents and such.

And, that we can't protect - if not a privileged communication, then we can't protect information that the tribe will give us a lot of times unless there's a specific exemption. I'm thinking of - and we wouldn't get into this on the Fishery side, but cultural resources and such.

But as a reminder, especially to the tribes, that information we do receive can be FOIA. And so once again, it's not that the tribe would need to go through FOIA, but to let them know that other folks could make a FOIA request for information we receive.

Linda Belton: All right, if - also, I'd like to take this time to remind you that electronic copies of the draft handbook are on - again, on the NOAA Legislative Affairs Web site, and written comments may be sent by any of the following methods. You can send an email to the following address, and this is all in our Federal

Register notice, but you can send an email to

NOAA.tribalhandbook@noaa.gov.

Or you can mail or hand deliver to Heather Sagar your comments at Department of Commerce, 14th and Constitution Avenue NW, Room 51027, Washington, DC, 20230. You can mark the outside of the envelope draft NOAA tribal handbook.

Again, that address is Heather Sagar, Department of Commerce, NOAA, 14th and Constitution Avenue NW, Room 51027, Washington, DC, 20230. Mark the outside of the envelope draft NOAA tribal handbook. Or a fax - by fax. And the fax number is 202-482-1844.

Coordinator: We do have a request coming through from Freddy. Your line is open.

Freddy Romero: Hi. I wanted to respond to the last comment made by the gentleman concerning FOIA. That was kind of what I was leading to in the exchange of information in the comment that I made earlier about requests for FOIA. And, I think that maybe when tribes are in consultation that maybe when information is recorded that it can be recorded in general terms. Not so specific to maybe a location, but maybe just an area.

Because I know that some of the issues that we have ensuring some of the locations that we have within a project area that would be you know very sensitive or extremely sensitive to the tribe, a lot of times we may need to share something that normally we wouldn't share outside of our own tribal relations or within our tribe itself with outside sources.

But because of where we're at today, we almost have no choice but to share this information. And I've made requests for FOIA before and I received

information and some of it's been blacked out. And, I don't know if maybe that could be done or if - when information is shared on a FOIA request, that it could be made in general terms with regards to you know sensitive sites to tribes.

Linda Belton: Thank you.

Coordinator: We have a request coming through from (Joe). Your line is open.

(Joe Shoemaker): Oh, thanks.

Just one last thing from (Joe) here before we go. I think I'm going to re-register for the August one, and - Webinar. And the thought here on my end, and within our organization, was that we were going to - this was going to be a Webinar presentation. I didn't realize we were going to have an hour of two-way. And is that how you're structuring the next one as well?

Linda Belton: Yes. That's how we planned on - I mean we hope to sit - you know, to have you look at the document and prepare your comments and your questions and then present them.

(Joe Shoemaker): Good. I appreciate that. It's just that when we see the words Webinar, we often think we're going to be looking at something and - this could've just been a conference call and I think we would've been more prepared.

Linda Belton: Yes. I admit that - as I said, you know, I thought that we would also have a copy of the document online. But as I said, I'm not technically savvy, so there was a mistake there on my part. So...

(Joe Shoemaker): Oh, okay.

Linda Belton: ...I apologize for that. But the next time we will have it - have a copy of the document.

(Joe Shoemaker): Well, I appreciate it. Thank you.

Coordinator: There's a request coming from (Tom)'s line. (Tom), your line is open.

(Tom Foster): Okay, thanks.

Reading on to Page 11, looking at (unintelligible) identifying participants in the consultation.

Molly Holt: Excuse me, (Tom), where are you from?

(Tom Foster): In Seattle.

Molly Holt: Okay, thank you. Continue. I'm sorry.

(Tom Foster): So that section on identifying participants says - in the third sentence, says the tribe designates its leader or members to the Tribal Council, and a NOAA official with decision-making authority would participate in the consultation.

So the typical situation I've seen is where the Tribal Biologist, for example, have a complaint about a draft biological opinion and there's a G-to-G going on it kind of stalls out with the (unintelligible) folks saying, "Well, gosh, we just don't have time to chase that down," and then it stops there.

And so I wonder whether there ought to be some mention of the possibility - I know that we have something later on about closing the G-to-G consultation

on Page 13, but I wonder whether you ought to consider providing for essentially some kind of appeal that goes beyond the local agency personnel who might be in conflict with the tribal scientists and to elevate the issue within NOAA?

You know, within the tribal government, you're dealing with the top levels. You've got the Tribal Council there and their advisors. But with NOAA, you're often dealing with a local agency and not with the regional people, and certainly not with the people in Maryland.

So I don't know exactly what the solution is, but there is kind of a difference at the governmental levels between the participants on the tribal side versus participants on the (unintelligible) side in a typical G-to-G.

Linda Belton: Any comments?

Heather Sagar: We'll review the...

Molly Holt: Yes. We'll try and think about how that could be made available. I appreciate your point though, (Tom).

Linda Belton: Thank you.

Next question?

Coordinator: At this time I'm showing no other.

Linda Belton: All right. (Unintelligible)...

Woman: Thank you.

Linda Belton: If we have no more questions or comments, we have another session scheduled for August 13th at the same time. And hopefully, as I said, we will - I will be more technically savvy for that one.

And again, thank you so much for joining us. I gave you several options of - for additional comments. If you - we'd like to - if you have other questions or you need more information, please go to our NOAA Web site or send me an email or Heather Sagar an email. That's linda.belton@noaa.gov. heather.sagar@noaa.gov. S-A-G-A-R.

Again, thank you for joining us and we're going to say goodbye. Thank you.

Coordinator: Today's conference is concluded. Participants may disconnect.

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